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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

STEPHEN CHRISTIAN, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

PARADIGM SERVICES, INC. d/b/a
ALLIED COMMERCIAL FINANCIAL, a
Minnesota corporation, and BLAKE
ZINKE, individually,

Defendants.

Case No.

CLASS ACTION

DEMAND FOR JURY TRIAL

Plaintiff Stephen Christian ("Christian") brings this Class Action Complaint and Demand for Jury Trial ("Complaint") against Defendant Paradigm Services, Inc. doing business as Allied Commercial Financial ("ACF") and Blake Zinke, ACF's Chief Operating Officer (collectively "Defendants"), to stop their practice of making unsolicited telemarketing calls to the cellular telephones of consumers nationwide and to obtain redress for all persons injured by its conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorney.

NATURE OF THE ACTION

1
2 1. Defendant ACF is a rapidly-growing payment processing company.

3
4 2. Defendant Blake Zinke is the chief operating officer of ACF.

5 3. Unfortunately for consumers, Defendants ACF and Blake Zinke cast
6 their marketing net too wide. That is, in an attempt to promote ACF's business
7 and generate leads for its merchant processing account, Defendants conducted
8 (and continue to conduct) a wide-scale telemarketing campaign that features the
9 making of repeated unsolicited phone calls to consumers' cellular telephones -
10 including cellular telephones and numbers that appear on the National Do Not
11 Call Registry - without consent, all in violation of the Telephone Consumer
12 Protection Act, 47 U.S.C. § 227 (the "TCPA").
13
14

15 4. By making the telephone calls at issue in this Complaint, Defendants
16 caused Plaintiff and the members of the Classes actual harm and cognizable
17 legal injury. This includes the aggravation and nuisance and invasions of privacy
18 that result from the receipt of such calls, in addition to a loss of value realized for
19 the monies consumers paid to their wireless carriers for the receipt of such calls.
20 Furthermore, the calls intentionally interfered with Plaintiff and the other Class
21 members use and enjoyment of their cellphones, including the related data,
22 software, and hardware components.
23
24
25

26 5. The TCPA was enacted to protect consumers from unsolicited and
27 annoying telephone calls like those alleged in this case. In response to
28

1 Defendants' unlawful conduct, Plaintiff files the instant lawsuit and seeks an
2 injunction requiring Defendants to cease all unsolicited telephone calling
3 activities to consumers as complained of herein and an award of statutory
4 damages to the members of the Class under the TCPA, together with costs and
5 reasonable attorneys' fees.
6

7 **PARTIES**

8
9 6. Plaintiff Stephen Christian is a natural person and citizen of the
10 State of Arizona.

11 7. Defendant Paradigm Services, Inc. does business as Allied
12 Commercial Financial or ACF which is a company existing under the laws of the
13 Minnesota with locations in St. Paul Minnesota and Mesa, Arizona. Defendant
14 conducts business throughout this District, the State of Arizona, and the United
15 States.
16
17

18 8. Defendant Blake Zinke is an individual residing in Phoenix, Arizona
19 and the chief operator officer of ACF.¹
20

21 **JURISDICTION AND VENUE**

22 9. This Court has federal question subject matter jurisdiction under 28
23 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection
24 Act, 47 U.S.C. § 227 et seq., which is a federal statute.
25

26 10. The Court has personal jurisdiction over Defendants ACF and Blake
27
28

¹ <https://www.linkedin.com/in/bzinkemobisquadmarketlaunch>

1 Zinke because they solicit significant consumer business in this District, have
2 entered into business to business contracts in this District, and the unlawful
3 conduct alleged in this Complaint occurred in, was directed to, and/or emanated
4 from this District.
5

6 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
7 because Defendants solicit a significant amount of consumer business within this
8 District and because the wrongful conduct giving rise to this case occurred in,
9 was directed to, and/or emanated from this District. Venue is additionally proper
10 because Plaintiff and Defendants are located in this District.
11

12 12. On information and belief, Defendant Blake Zinke directly and
13 personally participated in, directed and/or authorized, and ratified the conduct
14 constituting the statutory violations alleged herein. On information and belief,
15 Defendant Blake Zinke established and/or approved ACF's policies and
16 practices, oversaw operations, and was directly involved in the business
17 practices that violated the TCPA.
18
19

20 **COMMON FACTUAL ALLEGATIONS**

21 13. Defendant ACF is a merchant processing account company for small
22 to medium sized businesses.
23

24 14. Unfortunately for consumers, Defendants utilized (and continues to
25 utilize) a sophisticated telephone dialing system to call cellular telephone users
26 *en masse* for the purpose of promoting its services, often times calling
27
28

1 consumers on their cellular phones.

2 15. On information and belief, Defendant Blake Zinke personally
3 controlled and maintained the dialing equipment 3CLogic that was used in the
4 telemarketing campaign and oversaw and set the company's policies with
5 respect to telemarketing in general.
6

7 16. In Defendants' overzealous attempts to market its services,
8 Defendants placed (and continue to place) phone calls to consumers that never
9 provided consent to be called and to consumers with whom they have had no
10 prior dealings or relationship. Worse yet, Defendants placed (and continue to
11 place) repeated and unwanted calls to consumers whose phone numbers are
12 listed on the National Do Not Call Registry. Consumers place their cellphone
13 numbers on the Do Not Call Registry for the express purpose of avoiding
14 unwanted telemarketing calls like those alleged here.
15
16
17

18 17. Defendants seek to generate leads for its merchant processing
19 accounts for small and medium sized businesses. However, Defendants have
20 failed to appropriately segment ACF's call list between landline and cell phone
21 numbers. As a result, Defendants have called cell phone numbers with ACF's
22 auto-dialer equipment, which is expressly prohibited by the Telephone Consumer
23 Protection Act (TCPA).
24

25 18. Defendants calls are advertisements. Specifically, Defendants
26 pretend to call to inform the caller about the new EMV standard in new credit
27 cards that could affect the called party's current credit card processing. However,
28

1 this 'open' is designed to catch the consumer's attention so that Defendants can
2 then lead present their sales pitch.

3 19. The FCC has specifically addressed such dual-purpose calls. The
4 Commission has ruled that "if the call notwithstanding its free offer or other
5 information, is intended to offer property, goods, or services for sale either during
6 the call, or in the future, that call is an advertisement."²
7

8 20. Defendants, or their agents acting on their behalf, use a variety of
9 local phone numbers to make these unlawful sales calls to consumers.
10

11 21. Not surprisingly, these practices have led to significant complaints
12 from consumers, which can be found quickly on the Internet. For example,
13 consumers have publicly complained that:
14

- 15 • This company often calls regarding saving you money on credit
16 card fees...they never give specifics and want to come to your
17 place of business to show you what they can do. We have asked
18 them not to call and they continue to call every couple of
19 months.³
- 20 • A woman introduced herself as "ACF" and peppered me with
21 intimidating, abusive and harassing language, insisting that I tell
22 her about credit card use/non-use. I hung up and surprisingly,
23 within a matter of seconds, she called back again, using the
24 same intimidating, abusive, harassing language. She wanted to
25 know whether or not my business uses credit cards because a
26 "new law" is in effect affecting companies that accept credit
27 cards.⁴
- 28 • Part of misleading company called "Allied Commercial Financing"
that will try to call every couple days about money lending

² 2003 TCPA Order, 18 FCC Rcd at 14098, para. 142.

³ <http://800notes.com/Phone.aspx/1-619-359-8288>

⁴ <http://800notes.com/Phone.aspx/1-619-359-8288>

1 schemes and a new credit card law that you are supposedly non-
2 compliant with that they are to help you with. Their angle is to
3 catch the easily intimidated with a pushy open, rude
4 defensiveness, and refusal to put your number on their "Do not
5 call list."⁵

- 6 • Caller ID states the number as 619-359-8288. They have called 3
7 times this week, and every request to put us on their do-not-call
8 list was refused. We are a business location. They have a call
9 center and have "coaches" in the back ground over hearing the
10 conversation and trying to keep you on the line. They are
11 extremely aggressive. I would never ever do business with a
12 workroom operation like this, clearly they are out to take
13 advantage of people.⁶

14 22. In making the phone calls at issue in this Complaint, Defendants
15 and/or their agent utilized a contact center system that had the capacity to make
16 automated calls. On October 21, 2014 3CLogic announced in a press release
17 that Allied Commercial Financial selected 3CLogic as its leading cloud software
18 platform, which includes a predictive dialer.⁶ Defendant Zinke commented on
19 choosing the 3CLogic dialer that "Our former vendor simply lacked the lead and
20 call management features we require to be competitive and effective. It was
21 simply too difficult to make it work the way you needed it to."⁷ Defendant Zinke
22 further stated that the 3CLogic contact center was a "breath of fresh air...[t]he
23 solution is intuitive, the features on target, the architecture makes sense, and the
24 support team is always ready and helpful."⁸ Plaintiff has no reason to believe
25 these statements are untrue.

26 ⁵ <http://800notes.com/Phone.aspx/1-619-359-8288>

27 ⁶ <http://800notes.com/Phone.aspx/1-619-359-82888>. *Id.*

28 ⁷ <http://www.prweb.com/releases/2014/10/prweb12259689.htm>

⁸ *Id.*

1 23. Specifically, the hardware and software used by Defendants (or their
2 agent) has the capacity to store, produce, and dial random or sequential
3 numbers, and/or receive and store lists of telephone numbers, and to dial such
4 numbers, *en masse*, in an automated fashion without human intervention.
5 Defendants' automated dialing equipment includes features as a predictive
6 dialer, inasmuch as it is capable of making numerous calls simultaneously (all
7 without human intervention).
8
9

10 24. Defendants knowingly made (and continue to make) telemarketing
11 calls without the prior express consent of the call recipients and knowingly
12 continues to call them after requests to stop. As such, Defendants not only
13 invaded the personal privacy of Plaintiff and members of the putative Class, but
14 also intentionally and repeatedly violated the TCPA.
15
16

17 **FACTS SPECIFIC TO PLAINTIFF STEPHEN CHRISTIAN**

18 25. On July 2, 2003 Plaintiff Christian registered his cellular phone
19 number on the national do not call registry to avoid receiving unsolicited
20 telemarketing calls on his cellular phone.
21

22 26. On November 10, 2015, Plaintiff received a call on his cellular phone
23 from the phone number 602-892-0647. When Plaintiff answered the call he heard
24 a pause after he said hello and before an operator came onto the line. The live
25 operator asked to speak to the owner of the company and proceeded to try and
26 sell him a merchant processing account.
27
28

1 27. On November 11, 2015 Plaintiff received two calls from 602-892-
2 0653. Plaintiff answered the calls, and he heard a pause before being connected
3 to a live operator.

4 28. Plaintiff has received these same calls over the past year soliciting
5 him for a credit card processing account. Plaintiff has no need for a payment
6 processing account and has asked this caller to stop calling him.
7

8 29. Plaintiff does not have a relationship with Defendants, has never
9 provided his telephone number directly to Defendants, and has never requested
10 that Defendants place calls to his or offer him ACF's services. Plaintiff does not
11 have any business for which he uses his cellphone. Simply put, Plaintiff has
12 never provided any form of prior express written consent to Defendants to place
13 calls to him and has no business relationship with Defendants.
14

15 30. Defendants at all times are and were aware that the above-
16 described telephone calls were and are being made to consumers like Plaintiff
17 who had not consented to receive them and whose telephone numbers were
18 registered with the National Do Not Call Registry.
19
20
21

22 **CLASS ALLEGATIONS**

23 31. **Class Allegations:** Plaintiff Christian brings this action pursuant to
24 Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of himself and
25 the three classes defined as follows:
26

27 **Autodialed No Consent Class:** All persons in the United States who (1)
28 Defendants (or a third person acting on behalf of Defendants) called; (2)

1 on the person's cellular telephone number; (3) for the purpose of selling
2 Defendants' products and services; and (4) for whom Defendants claim it
3 obtained prior express consent in the same manner as Defendants claim it
4 obtained prior express consent to call the Plaintiff.

5 **Do Not Call Registry Class:** All persons in the United States who (1)
6 Defendants (or a third person acting on behalf of Defendants) called more
7 than one time on his/her cellphone; (2) within any 12-month period (3)
8 where the cellphone number had been listed on the National Do Not Call
9 Registry for at least thirty days; (4) for the purpose of selling Defendants
10 products and services; and (5) for whom Defendants claim it obtained prior
11 express consent in the same manner as Defendants claim it obtained prior
12 express consent to call the Plaintiff.

13 The following people are excluded: any Judge or Magistrate presiding over this
14 action and members of their families; (2) Defendants, Defendants' subsidiaries,
15 parents, successors, predecessors, and any entity in which the Defendant or
16 their parents have a controlling interest and its current or former employees,
17 officers and directors; (3) persons who properly execute and file a timely request
18 for exclusion from the Class; (4) persons whose claims in this matter have been
19 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
20 Defendants' counsel; and (6) the legal representatives, successors, and assigns
21 of any such excluded persons. Plaintiff anticipates the potential need to amend
22 the Class Definitions following the completion of class discovery regarding the
23 size and scope of the Classes.
24
25
26

27 32. **Numerosity:** The exact sizes of the Classes are unknown and not
28

1 available to Plaintiff at this time, but it is clear that individual joinder is
2 impracticable. On information and belief, Defendants made telephone calls to
3 thousands of consumers who fall into the definition of the Classes. Members of
4 the Classes can be easily identified through Defendants' records.
5

6 **33. Commonality and Predominance:** There are many questions of
7 law and fact common to the claims of Plaintiff and the Classes, and those
8 questions predominate over any questions that may affect individual members of
9 the Classes. Common questions for the Classes include, but are not necessarily
10 limited to the following:
11

- 12 (a) Whether Defendants' conduct violated the TCPA;
- 13 (b) Whether Defendants systematically made telephone calls to
14 individuals who did not previously provide Defendants and/or
15 its agents with their prior express consent to receive such
16 phone calls;
- 17 (c) Whether Defendants made the calls with the use of an ATDS;
- 18 (d) Whether Defendants systematically made telephone calls to
19 consumers whose telephone numbers were registered with
20 the National Do Not Call Registry;
- 21 (e) Whether members of the Class are entitled to treble damages
22 based on the willfulness of Defendants' conduct;
- 23 (f) Whether Defendant Zinke personally oversaw the making of
24 the calls in this case or otherwise acted so as to be personally
25 liable under the TCPA; and
- 26 (g) Whether Defendants systematically made telephone calls to
27 consumers after they explicitly asked not to be called from
28 Defendants.

1 34. **Typicality:** Plaintiff's claims are typical of the claims of the other
2 members of the Classes. Plaintiff and the Classes sustained damages as a result
3 of Defendants' uniform wrongful conduct during transactions with Plaintiff and the
4 Classes.
5

6 35. **Adequate Representation:** Plaintiff will fairly and adequately
7 represent and protect the interests of the Classes, and has retained counsel
8 competent and experienced in complex class actions. Plaintiff has no interest
9 antagonistic to those of the Classes, and Defendants has no defenses unique to
10 Plaintiff.
11

12 36. **Policies Generally Applicable to the Classes:** This class action is
13 appropriate for certification because Defendants have acted or refused to act on
14 grounds generally applicable to the Classes as respective wholes, thereby
15 requiring the Court's imposition of uniform relief to ensure compatible standards
16 of conduct toward the Class members, and making final injunctive relief
17 appropriate with respect to the Classes as respective wholes. Defendants'
18 practices challenged herein apply to and affect the Class members uniformly,
19 and Plaintiff's challenge of those practices hinges on Defendants' conduct with
20 respect to the Classes as respective wholes, not on facts or law applicable only
21 to Plaintiff.
22

23 37. **Superiority:** This case is also appropriate for class certification
24 because class proceedings are superior to all other available methods for the fair
25 and efficient adjudication of this controversy given that joinder of all parties is
26
27
28

1 impracticable. The damages suffered by the individual members of the Classes
2 will likely be relatively small, especially given the burden and expense of
3 individual prosecution of the complex litigation necessitated by Defendants'
4 actions. Thus, it would be virtually impossible for the individual members of the
5 Classes to obtain effective relief from Defendants' misconduct. Even if members
6 of the Classes could sustain such individual litigation, it would still not be
7 preferable to a class action, because individual litigation would increase the delay
8 and expense to all parties due to the complex legal and factual controversies
9 presented in this Complaint. By contrast, a class action presents far fewer
10 management difficulties and provides the benefits of single adjudication,
11 economy of scale, and comprehensive supervision by a single court. Economies
12 of time, effort and expense will be fostered and uniformity of decisions ensured.
13
14
15
16

17 **FIRST CAUSE OF ACTION**
18 **Violation of 47 U.S.C. § 227**

19 **(On behalf of Plaintiff and the Autodialed No Consent Class)**

20 38. Plaintiff incorporates the foregoing allegations as if fully set forth
21 herein.

22 39. Defendants made unsolicited and unwanted telemarketing calls to
23 telephone numbers belonging to Plaintiff and the other members of the Class—
24 without their prior express written consent—in an effort to sell its products and
25 services.
26
27
28

1 40. Defendants made the telephone calls using equipment that had the
2 capacity to store or produce telephone numbers to be called using a random or
3 sequential number generator, and/or receive and store lists of phone numbers,
4 and to dial such numbers, *en masse*.
5

6 41. Defendants utilized equipment that made the telephone calls to
7 Plaintiff and other members of the Class simultaneously and without human
8 intervention.
9

10 42. By making unsolicited telephone calls to Plaintiff and members of the
11 Class's cellular telephones without prior express consent, and by utilizing an
12 ATDS, Defendants violated 47 U.S.C. § 227(b)(1)(A)(iii).
13

14 43. As a result of Defendants' unlawful conduct, Plaintiff and the
15 members of the Class suffered actual damages in the form of monies paid to
16 receive the unsolicited telephone calls on their cellular phones and, under
17 Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in
18 damages for each such violation of the TCPA.
19

20 44. Should the Court determine that Defendants' conduct was willful and
21 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of
22 statutory damages recoverable by Plaintiff and the other members of the Class.
23
24
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SECOND CAUSE OF ACTION

Violation of 47 U.S.C. § 227

(On behalf of Plaintiff and the Autodialed Do Not Call Class)

45. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

46. Defendants made unsolicited and unwanted telemarketing calls to telephone numbers belonging to Plaintiff and the other members of the Class on their cellular telephone in an effort to sell its products and services *after* the person informed Defendants that s/he no longer wished to receive calls from Defendants.

47. Defendants made the telephone calls using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*.

48. Defendants utilized equipment that made the telephone calls to Plaintiff and other members of the Class simultaneously and without human intervention.

49. By making unsolicited telephone calls to Plaintiff and members of the Class's cellular telephones after they requested to no longer receive calls, Defendants' violated 47 U.S.C. § 227(b)(1)(A)(iii) by continuing to call them without prior express consent.

50. As a result of Defendants' unlawful conduct, Plaintiff and the members of the Class suffered actual damages in the form of monies paid to

1 receive the unsolicited telephone calls on their cellular phones and, under
 2 Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in
 3 damages for each such violation of the TCPA.

4
 5 51. Should the Court determine that Defendants' conduct was willful and
 6 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of
 7 statutory damages recoverable by Plaintiff and the other members of the Class.
 8

9 **THIRD CAUSE OF ACTION**

10 **Violation of 47 U.S.C. § 227 *et seq.***

11 **(On behalf of Plaintiff and Do Not Call Registry Class)**

12 52. Plaintiff incorporates the foregoing allegations as if fully set forth
 13 herein.

14 53. 47 U.S.C. § 227(c) provides that any "person who has received more
 15 than one telephone call within any 12-month period by or on behalf of the same
 16 entity in violation of the regulations prescribed under this subsection may" bring a
 17 private action based on a violation of said regulations, which were promulgated
 18 to protect telephone subscribers' privacy rights to avoid receiving telephone
 19 solicitations to which they object.
 20

21 54. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c),
 22 provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a]
 23 residential telephone subscriber who has registered his or her telephone number
 24 on the national do-not-call registry of persons who do not wish to receive
 25 telephone solicitations that is maintained by the federal government."
 26
 27

28 55. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are

1 applicable to any person or entity making telephone solicitations or telemarketing
2 calls to wireless telephone numbers to the extent described in the Commission's
3 Report and Order, CG Docket No. 02-278, FCC 03-153, 'Rules and Regulations
4 Implementing the Telephone Consumer Protection Act of 1991,'" which the
5 Report and Order, in turn, provides as follows:
6

7
8 The Commission's rules provide that companies making telephone
9 solicitations to residential telephone subscribers must comply with
10 time of day restrictions and must institute procedures for
11 maintaining do-not-call lists. For the reasons described above, we
conclude that these rules apply to calls made to wireless telephone
numbers. We believe that wireless subscribers should be afforded
the same protections as wireline subscribers.

12 56. 47 C.F.R. § 64.1200(d) further provides that "[n]o person or entity
13 shall initiate any call for telemarketing purposes to a residential telephone
14 subscriber unless such person or entity has instituted procedures for maintaining
15 a list of persons who request not to receive telemarketing calls made by or on
16 behalf of that person or entity. The procedures instituted must meet the following
17 minimum standards:
18
19

- 20 (1) Written policy. Persons or entities making calls for
21 telemarketing purposes must have a written policy, available
22 upon demand, for maintaining a do-not-call list.
- 23 (2) Training of personnel engaged in telemarketing. Personnel
24 engaged in any aspect of telemarketing must be informed and
25 trained in the existence and use of the do-not-call list.
- 26 (3) Recording, disclosure of do-not-call requests. If a person or
27 entity making a call for telemarketing purposes (or on whose
28 behalf such a call is made) receives a request from a
residential telephone subscriber not to receive calls from that
person or entity, the person or entity must record the request

and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

- (4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.
- (5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.
- (6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

57. Defendants violated § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to wireless telephone subscribers such as Plaintiff and the Do Not Call Registry class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from

1 Defendants, as set forth in § 64.1200(d)(3).

2 58. Defendants also violated § 64.1200(d) by failing to have a written
3 policy of dealing with do not call requests, by failing to inform or train its
4 personnel regarding any do not call list, and by failing to record and honor do not
5 call requests.
6

7 59. Defendants made more than one unsolicited telephone call to
8 Plaintiff and members of the Do Not Call Registry class within a 12-month period
9 without their prior express consent to receive such calls. Plaintiff and members of
10 the Do Not Call Registry class never provided any form of consent to receive
11 telephone calls from Defendants, and/or Defendants do not have a current record
12 of consent to place telemarketing calls to them.
13
14

15 60. Defendants violated § 64.1200(d) by initiating calls for telemarketing
16 purposes to residential and wireless telephone subscribers, such as Plaintiff and
17 the Do Not Call Registry class, without instituting procedures that comply with the
18 regulatory minimum standards for maintaining a list of persons who request not
19 to receive telemarketing calls from them.
20
21

22 61. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and the
23 Do Not Call Registry class received more than one telephone call in a 12-month
24 period made by or on behalf of Defendants in violation of 47 C.F.R. § 64.1200, as
25 described above. As a result of Defendants' conduct as alleged herein, Plaintiff
26 and the Do Not Call Registry class suffered actual damages and, under section
27 47 U.S.C. § 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages
28

1 for such violations of § 64.1200.

2 62. To the extent Defendants' misconduct is determined to be willful and
3 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount
4 of statutory damages recoverable by the members of the Do Not Call Registry
5 class.
6

7
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff Stephen Christian, individually and on behalf of the
10 Classes, prays for the following relief:

11 1. An order certifying the Classes as defined above, appointing Plaintiff
12 Stephen Christian as the representative of the Classes and appointing his
13 counsel as Class Counsel;
14

15 2. An award of actual and statutory damages;
16

17 3. An injunction requiring Defendants and their agents to cease all
18 unsolicited telephone calling activities, to honor do not call requests, and to
19 provide a domestic number for opting out, and otherwise protecting the interests
20 of the Classes;
21

22 4. A declaratory judgment declaring that Defendants' calls violated the
23 TCPA, that Defendants' equipment constitutes an automatic telephone dialing
24 system under the TCPA, and that Defendants failed to obtain prior express
25 written consent to call Plaintiff;
26

27 5. An award of reasonable attorneys' fees and costs; and
28

1 6. Such other and further relief that the Court deems reasonable and
2 just.

3
4 **TRIAL BY JURY**

5 Pursuant to Federal Rules of Civil Procedure 38(b) Plaintiff has demanded a
6 trial by jury.

7
8 Dated this 12th day of February 2016.

9 **ADELMAN GERMAN, P.L.C.**

10 By: /s/ Steven J. German
11 Steven J. German
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13 Scottsdale, Arizona 85258

14 **WOODROW & PELUSO**

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21 **LAW OFFICES OF STEFAN COLEMAN,
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27 Law@Stefancoleman.com

28 *Motion for admission *pro hac vice pending*

*Attorneys for Plaintiff Stephen Christian, on
his own behalf, and behalf of all others
similarly situated*